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No. [redacted] 17

In The

Supreme Court of the United States

October Term, 1930.

ALBERT A. HOEPER,

Appellant,

v.

TAX COMMISSION OF WISCONSIN and MARATHON COUNTY OF WISCONSIN,

Respondents.

STATEMENT OF JURISDICTION.

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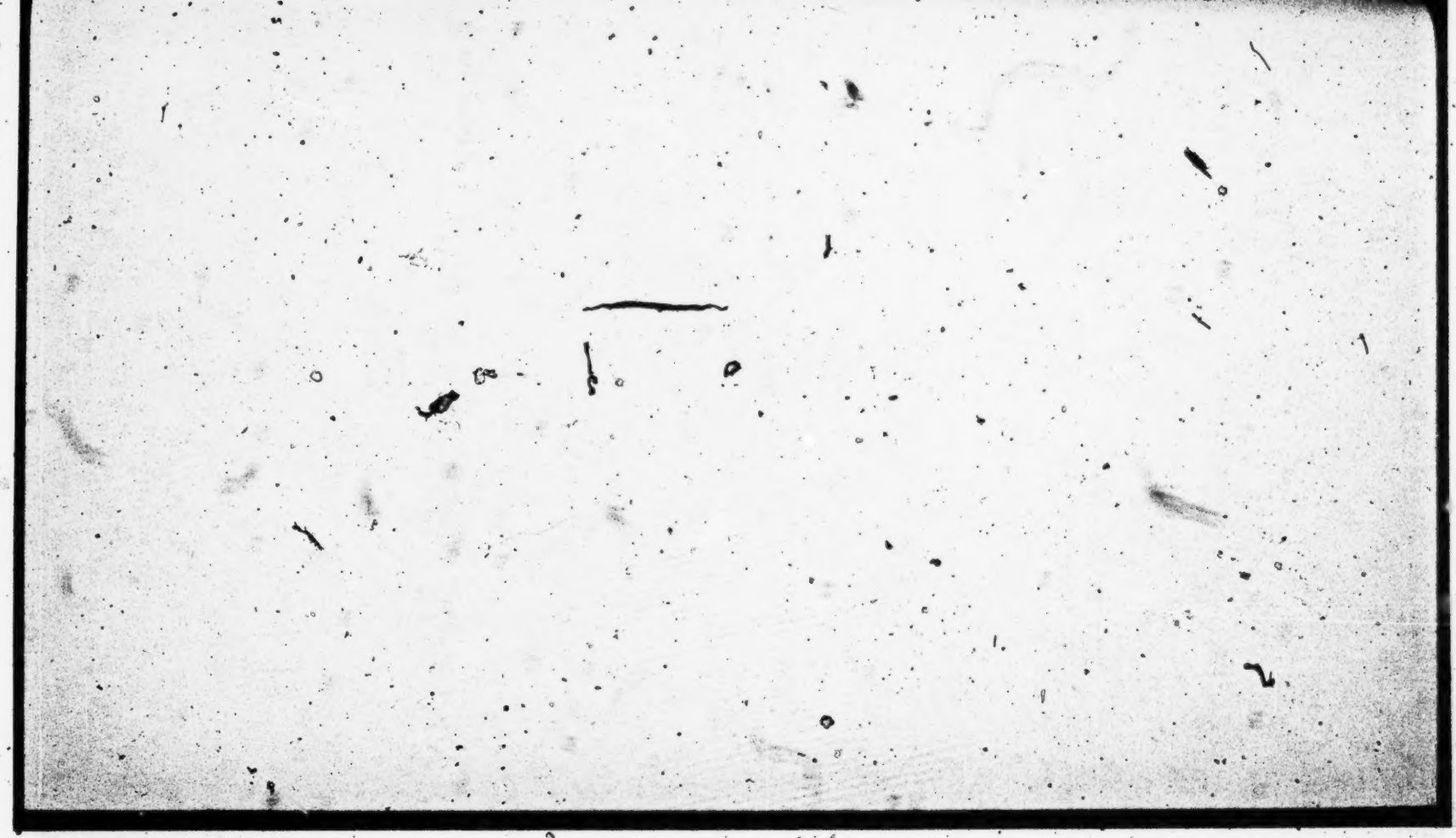

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STATEMENT OF JURISDICTION.

Appellant makes this statement of the basis on which he contends this Court has jurisdiction to review on this appeal the final judgment of the Supreme Court of Wisconsin.

(a) *Judicial Code, Sec. 237 (U. S. C. A., Sec. 344)*, provides:

> "A final judgment * * * in any suit in the highest court of a state in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any state, on the ground of its being

repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

(Appeal by U. S. C. A., Sec. 861a)

(b) Final judgment of the Supreme Court of Wisconsin was on November 11, 1930 (P. of R. 40).

Appeal allowed and citation issued January 22, 1931 (P. of R. 4, 5, 7); served January 24, 1931 (P. of R. 9).

(c) Appellant appealed to the Circuit Court for Marathon County, Wisconsin, (in the manner provided by Wisconsin Statutes), from the action of the Assessor of Incomes of said County in assessing, and the County in collecting, a tax against appellant of $292.19 based on the income of appellant and also that of his wife (P. of R. 18-20). The tax was on income of the years 1926 and 1927. Mr. and Mrs. Hoeper were widower and widow, respectively, until October 22, 1927, on which date they married.

The Circuit Court allowed a recovery of that portion only of the assessment which was based on the income of Mrs. Hoeper prior to October 22, 1927, when she became Mrs. Hoeper. A recovery was denied of the portion based on the income of Mrs. Hoeper after marriage, as well as of the portion assessed, both on his income and hers, at a higher rate because of the fact that both had income. See Opinion (P. of R. 28-34), Findings of Fact and Conclusions (P. of R. 35-37), and Judgment of the Circuit Court (P. of R. 38). The decision upholds the validity of, against the provisions of the *Fourteenth Amendment* of, the two statutes to be quoted, which authorize such an assessment. The Circuit Judge was of the opinion that

both statutes are valid, but that in view of the previous decisions of the Wisconsin Supreme Court, he was forced to uphold the statutes until the State Supreme Court ruled otherwise. (See Opinion, P. of R. 29-32.)

The Supreme Court of Wisconsin on appeal affirmed the judgment of the Circuit Court holding both statutes valid as against the provisions of the *Fourteenth Amendment*. (Opinion, P. of R. 42-43.)

Hence this appeal to this Court.

The statutes so held valid and which are necessary to sustain the tax and judgment are:

1. *R. S. 71.05 (2d), Statutes of Wisconsin*, reading thus:

> * * * "In computing taxes and the amount of taxes payable by persons residing together as members of a family, the income of the wife and the income of each child under eighteen years of age shall be added to that of the husband or father, or if he be not living, to that of the head of the family, and assessed to him except as hereinafter provided. The taxes levied shall be payable by such husband or head of the family, but if not paid by him may be enforced against any person whose income is included within the tax computation", and

2. *R. S. 71.09 (4c), Statutes of Wisconsin*, reading thus:

> "Married persons living together as husband and wife may make separate returns or join in a single joint return. In either case the tax shall be computed on the combined average taxable income. The exemptions provided for in *subsection (2) of section 71.05* shall be allowed but once and divided equally and the amount of tax due shall be paid by each in the proportion that the average income of each bears to the combined average income."

[illegible] validity of such statute is an

[illegible] pursuant to which this tax was [illegible] income received by his [illegible] separate estate, to which appellant [illegible] and in which he has no in- [illegible] Fourteenth Amendment to the Consti- [illegible]

[illegible] pursuant to which a tax was [illegible] at a higher rate than is applicable to [illegible] because of the fact that his [illegible] from his said separate estate, vio- [illegible] Fourteenth Amendment to the Constitution of [illegible]

[illegible] cases are believed to sustain the [illegible]

[illegible] Transit Co. v. Kentucky, 199 [illegible]

[illegible] v. Brady, 208 U. S. 548.

[illegible] Co. v. Crowe, 220 U. S. 364.

[illegible] Bank v. Des Moines, 205 U. S. [illegible] 62.

[illegible] v. Bowers, 281 U. S. 376.

[illegible] v. Burns, 75 Law. Ed. 159.

Dated February 26, 1931.

Respectfully submitted,

CLAIRE B. BIRD,
Attorney for Appellant.